James J. Gold 80100
Norma L. Hammes 80149
GOLD and HAMMES, Attorneys
1570 The Alameda, #223
San Jose, CA 95126
(408) 297-8750

Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re: Margarita Hernandez Munoz Debtor	Chapter 13 Case No. 08-5-3270 RLE Date: January 21, 2010 Time: 2:00 p.m. Judge Roger L. Efremsky
Devin Derham-Burk Chapter 13 Trustee Movant	

DEBTOR'S OPPOSITION TO MOTION TO DISMISS CASE

The debtor opposes the Trustee's motion to dismiss her chapter 13 case as follows:

1. The Trustee's motion has two bases:

   - Unreasonable delay by the debtor that is prejudicial to creditors pursuant to 11 U.S.C. §1307(c)(1).
   - The plan may not be feasible pursuant to 11 U.S.C. §1325(a)(6).

2. The Trustee then states that the debtor's plan, requiring payments of $300 per month is paid through October, requiring the payment of $600 to be current through the last full month, December, and supports her statement with a declaration that these facts regarding payments are true.

3. Additionally, in her declaration, without any factual support, the Trustee asserts that "Creditors are prejudiced by the debtor's delay because they are not receiving payments while the debtor enjoys the benefit of bankruptcy protection in this proceeding. In addition, I am concerned that the debtor does not have the ability to make all payments under the plan as required by 11 U.S.C. §1325(a)(6)."

Argument

1. The Trustee has two bases for her motion to dismiss this case: delay which is prejudicial to creditors and an unconnected concern regarding the "feasibility" of the plan.

2. Regarding Prejudicial Delay:

A. Any delay is not prejudicial. There are only two secured creditors in this case, both of which are secured by the debtor's home. The holder of the first deed of trust, Wachovia, has received full relief from the automatic stay to foreclose on the debtor's home, and the IRS is the only priority creditor with a claim of only $441.99, less than two plan payments. Under the plan as filed, the IRS can expect to begin to receive payments in early 2013, and while under the plan, the two secured creditors would receive payments through early 2013, since the first deed of trust holder has received relief from the stay, unless it agrees to a loan modification, neither secured creditor should have any expectations of receiving disbursements from the debtor's plan at all. Thus delays in confirmation have not affected these creditors at all, so there cannot be prejudice to them.

B. Whether any delay exists which is prejudicial is a factual matter requiring evidence, not merely an assertion in the abstract that a delay in confirmation is *ipso facto* prejudicial in some manner.

C. Regarding prejudicial delay, the facts to be determined are:

i. Whether there has been delay;

ii. Whether any delay so found has been delay by the debtor;

iii. Whether any delay so found by the debtor has been unreasonable;

iv. To which creditors any delay so found by the debtor which was unreasonable was also prejudicial;

v. The extent of the prejudice to each of these creditors caused by this unreasonable delay by the debtor; and finally

vi. Whether and why the sum total of this prejudice so found outweighs the debtor's rights to enjoy the protections of a Chapter 13 rehabilitation.

3. Regarding Feasibility:

A. Since the only facts stated by the Trustee deal with the state of the debtor's payments, feasibility is being addressed herein based on counsel's unsupported hypothesis that there is an evidentiary connection that the Trustee will try to make in the future between plan payments and feasibility, even though the debtor has stated to her counsel that she will be current on her plan payments by the time this motion is heard.

B. The debtor's plan has been in existence for approximately 19 months, and as stated by the Trustee, the debtor is only two months in arrears on her plan payments. The debtor has made over 89% of her required payments into the plan and has been behind on her plan payments previously in her case. Each time she has been behind, she has caught up, and this level of success clearly shows that the plan is feasible.

C. Regarding feasibility, the question to be answered is: "Using realistic estimates regarding the debtor's future, will the debtor be able to keep abreast of her plan payments in a manner consistent with other debtors under similar circumstances who have successfully completed their plan and received a discharge?

D. The debtor has been able to do so up to now, and there is no reason to believe that she will not be able to do so in the future. Should there need to be an evidentiary hearing on this matter, the debtor can be expected to testify regarding her justifiable optimism for the future particularly once the status of her home has been resolved.

4. This motion should be withdrawn, and if not withdrawn it should be overruled, and if not overruled it should be set for an evidentiary hearing where the Trustee must prove up her case.

Request for an Evidentiary Hearing

1. This motion is brought for the purpose of dismissing the debtor's Chapter 13 case, and if this motion is granted it will irreparably affect the interests of the debtor. It will have an immediate impact of removing the protection of the debtor's Chapter 13 case and leaving the debtor vulnerable to the actions of all of creditors, and it will prevent the debtor from having the time to be able to reorganize financial affairs under the supervision of a neutral Bankruptcy Court. It will appear on her credit report, and if she has to file another bankruptcy case in order to protect herself or her assets in the future, not only will her credit report then show two separate bankruptcies, but if she is compelled to file a second case within a year, she will have the added costs and risks associated with keeping the automatic stay in place in her new case.

2. Because of these drastic and permanent effects, the dismissal of the debtor's case should be considered with the utmost care and sensitivity to the interests of all parties, and must not be done in a summary or cavalier fashion, and must never be done simply for the convenience of the Trustee, or even of the

Court.

3. As stated above, the motion of the Trustee is essentially one based on the facts of this case and not simply on the law.

4. The Trustee, in her declaration, has stated certain facts regarding the status of the case and of one or more objections to the plan, along with her conclusions which she urges the Court to adopt.

5. The Trustee's conclusions do not flow inescapably from the facts stated as a matter of law, and the Court cannot simply adopt them without the benefit of evidence that the Trustee's conclusions are supported by the facts of the case and are not invalidated by those facts.

6. Accordingly, because the debtor believes that the Trustee cannot support her conclusions from the actual facts of this case, and because the debtor wishes to present evidence to refute the Trustee's conclusions, the debtor hereby requests that the Court set an evidentiary hearing so that the Trustee and the debtor can both present evidence which supports their position and which refutes the other's position.

Request for Findings of Fact and Conclusions of Law

1. The debtor requests that the Court provide written findings of fact and conclusions of law for any decision of the Court on this matter which is adverse to the debtor's interest.

Prayer

1. That this motion be overruled;

2. That the debtor's plan be confirmed; and

3. That in the event that either of the above are not granted, that before this case is summarily dismissed an evidentiary hearing be conducted to provide the debtor with her due-process rights to respond to actual evidence presented and

to provide evidence in response; to do discovery to determine what the Trustee's evidence is, and to have written findings of fact and conclusions of law supporting the dismissal of this case so that it can be seen that the case was not dismissed in a summary fashion or for mere convenience of the Trustee or of the Court.

Respectfully submitted,

Dated: January 18, 2010

James J. Gold
Attorney for the Debtor

James J. Gold 80100
Norma L. Hammes 80149
GOLD and HAMMES, Attorneys
1570 The Alameda, #223
San Jose, CA 95126
(408) 297-8750

Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re: Margarita Hernandez Munoz Debtor	Chapter 13 Case No. 08-5-3270 RLE
Devin Derham-Burk Chapter 13 Trustee Movant	Date: January 21, 2010 Time: 2:00 p.m. Judge Roger L. Efremsky

DECLARATION OF COUNSEL

James J. Gold declares as follows:

1. I have reviewed the calculations of the debtor's plan distributions to creditors and other entities, and the attached MONTHLY DISTRIBUTION OF PLAN PAYMENTS accurately represents the distribution to creditors in the debtor's plan as presently proposed.

2. As shown on this document, general unsecured creditors can expect no distribution from this plan, and thus no irregularities in plan payments by the debtor can have any prejudicial effect on general unsecured creditors.

3. Priority unsecured creditors cannot expect any distribution until early 2013 under the proposed plan, so any early irregularities in plan payments cannot affect general unsecured creditors.

4. Secured creditors were scheduled to receive minimal distributions for the early part of the plan, but in this case the senior lienholder obtained full relief from the automatic stay to foreclose on the debtor's residence, and if it does so it will render the junior lienholder unsecured, forcing the junior lienholder into general unsecured status.

5. The removal of the secured claims' payments which are ahead of the priority distribution would accelerate the payment of the priority claim.

6. Based on the above, it is the opinion of counsel for the debtor that no delay in payments in this case will prejudice any creditors.

I declare under penalty of perjury that the forgoing is true and that this declaration was executed in San Jose, California on the date below.

Dated: January 18, 2010

James J. Gold
Attorney for the Debtor

Margarita Hernandez Munoz

Date: January 17, 2010

GOLD and HAMMES, Attorneys
GOLD and HAMMES, Attorneys 80100 & 80149
1570 The Alameda, Suite 223
San Jose, CA 95126
(408) 297-8750

MONTHLY DISTRIBUTION OF PLAN PAYMENTS

Month	Payment	Secured	Priority	Unsecured	Attorney	Trustee
Jul 2008 [1]	300.00	20.00			257.50	22.50
Aug 2008 [2]	300.00	20.00			257.50	22.50
Sep 2008 [3]	300.00	20.00			257.50	22.50
Oct 2008 [4]	300.00	20.00			257.50	22.50
Nov 2008 [5]	300.00	20.00			257.50	22.50
Dec 2008 [6]	300.00	20.00			257.50	22.50
Jan 2009 [7]	300.00	20.00			257.50	22.50
Feb 2009 [8]	300.00	20.00			257.50	22.50
Mar 2009 [9]	300.00	20.00			257.50	22.50
Apr 2009 [10]	300.00	20.00			257.50	22.50
May 2009 [11]	300.00	20.00			257.50	22.50
Jun 2009 [12]	300.00	20.00			257.50	22.50
Jul 2009 [13]	300.00	20.00			257.50	22.50
Aug 2009 [14]	300.00	20.00			257.50	22.50
Sep 2009 [15]	300.00	159.50			118.00	22.50
Oct 2009 [16]	300.00	277.50				22.50
Nov 2009 [17]	300.00	277.50				22.50
Dec 2009 [18]	300.00	277.50				22.50
Jan 2010 [19]	300.00	277.50				22.50
Feb 2010 [20]	300.00	277.50				22.50
Mar 2010 [21]	300.00	277.50				22.50
Apr 2010 [22]	300.00	277.50				22.50
May 2010 [23]	300.00	277.50				22.50
Jun 2010 [24]	300.00	277.50				22.50
Jul 2010 [25]	300.00	277.50				22.50
Aug 2010 [26]	300.00	277.50				22.50
Sep 2010 [27]	300.00	277.50				22.50
Oct 2010 [28]	300.00	277.50				22.50
Nov 2010 [29]	300.00	277.50				22.50
Dec 2010 [30]	300.00	277.50				22.50
Jan 2011 [31]	300.00	277.50				22.50
Feb 2011 [32]	300.00	277.50				22.50
Mar 2011 [33]	300.00	277.50				22.50
Apr 2011 [34]	300.00	277.50				22.50
May 2011 [35]	300.00	277.50				22.50
Jun 2011 [36]	300.00	277.50				22.50
Jul 2011 [37]	300.00	277.50				22.50
Aug 2011 [38]	300.00	277.50				22.50
Sep 2011 [39]	300.00	277.50				22.50
Oct 2011 [40]	300.00	277.50				22.50
Nov 2011 [41]	300.00	277.50				22.50
Dec 2011 [42]	300.00	277.50				22.50
Jan 2012 [43]	300.00	277.50				22.50
Feb 2012 [44]	300.00	277.50				22.50
Mar 2012 [45]	300.00	277.50				22.50
Apr 2012 [46]	300.00	277.50				22.50
May 2012 [47]	300.00	277.50				22.50
Jun 2012 [48]	300.00	277.50				22.50
Jul 2012 [49]	300.00	277.50				22.50
Aug 2012 [50]	300.00	277.50				22.50
Sep 2012 [51]	300.00	277.50				22.50
Oct 2012 [52]	300.00	277.50				22.50
Nov 2012 [53]	300.00	277.50				22.50
Dec 2012 [54]	300.00	277.50				22.50
Jan 2013 [55]	300.00	277.50				22.50
Feb 2013 [56]	300.00	277.50				22.50
Mar 2013 [57]	300.00	277.50				22.50
Apr 2013 [58]	300.00	168.57	108.93			22.50
May 2013 [59]	300.00		277.50			22.50
Jun 2013 [60]	60.06		55.56			4.50
Totals	17,760.06	12,263.07	441.99		3,723.00	1,332.00

(408) 297-8750 #80100 & 80149
James J. Gold
Norma L. Hammes
GOLD and HAMMES, Attorneys
1570 The Alameda, Suite 223
San Jose, CA 95126
Attorneys for the Debtor

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:

Margarita Hernandez Munoz

Debtor /

Chapter 13
Case No. 08-5-3270 RLE

CERTIFICATE OF SERVICE RE
DEBTOR'S OPPOSITION TO MOTION TO DISMISS
CASE and DECLARATION OF COUNSEL

I, the undersigned, declare that I am employed in the County of Santa Clara. I am over the age of 18 years and not a party to the within entitled action. My business address is 1570 The Alameda, Suite 223, San Jose, California.

On January 18, 2010, I served

Devin Derham-Burk, The Chapter 13 Trustee

by telephone facsimile at 408-354-5513 with a true and correct copy of the within DEBTOR'S OPPOSITION TO MOTION TO DISMISS CASE and DECLARATION OF COUNSEL.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on January 18, 2010, at San Jose, California.

Dated: January 18, 2010

HP LaserJet *3055*

Fax Call Report

GOLD and HAMMES
408-297-1189
Jan-18-2010 10:06PM

Job	Date	Time	Type	Identification	Duration	Pages	Result
9221	1/18/2010	10:04:04PM	Send	93545513	2:38	9	OK

James J. Gold 80100
Norma L. Hammes 80149
GOLD and HAMMES, Attorneys
1570 The Alameda, #223
San Jose, CA 95126
(408) 297-8750

Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re: Margarita Hernandez Munoz Debtor	Chapter 13 Case No. 08-5-3270 RLE Date: January 21, 2010 Time: 2:00 p.m. Judge Roger L. Efremsky
Devin Derham-Burk Chapter 13 Trustee Movant	

DEBTOR'S OPPOSITION TO MOTION TO DISMISS CASE

The debtor opposes the Trustee's motion to dismiss her chapter 13 case as follows:

1. The Trustee's motion has two bases:

- Unreasonable delay by the debtor that is prejudicial to creditors pursuant to 11 U.S.C. §1307(c)(1).
- The plan may not be feasible pursuant to 11 U.S.C. §1325(a)(6).

2. The Trustee then states that the debtor's plan, requiring payments of $300 per month is paid through October, requiring the payment of $600 to be current through the last full month, December, and supports her statement with a declaration that these facts regarding payments are true.